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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)	
)	IN EQUITY NO. C-125-MDD
Plaintiff,)	Subproceeding: 3:73-CV-00127-MDD-WGC
)	
WALKER RIVER PAIUTE TRIBE,)	
)	
Plaintiff-Intervenor,)	AMENDED COUNTERCLAIM OF THE
vs.)	UNITED STATES OF AMERICA FOR
)	WATER RIGHTS ASSERTED ON
WALKER RIVER IRRIGATION DISTRICT,)	BEHALF OF THE WALKER RIVER
a corporation, et al.,)	PAIUTE INDIAN TRIBE.
)	
Defendants.)	

COMES NOW, the United States of America, at the request of the Secretary of the Interior, by and through its undersigned attorneys, on its own behalf and for the benefit of the Walker River Paiute Tribe, and herewith asserts the following claims:

INTRODUCTION

1. This Amended Counterclaim is made for the confirmation and declaration of certain rights in the United States to the use and storage of water in, on, under and otherwise appurtenant to certain lands in the Walker River basin owned by the United States that are under the jurisdiction of the Department of the Interior and held in trust or restricted status by the United States for the Walker River Paiute Tribe and its members.¹ The rights set forth in this amended counterclaim are in addition to the right to divert the natural flow of the Walker River and its tributaries, awarded to the United States in the Decree entered in this action on April 14, 1936, as amended on April 24, 1940 in this action, hereinafter, the "Decree." Except for the claims set forth here, the United States continues to maintain all water right claims asserted in the First Amended Counterclaim (ECF No. 59) related to all other Indian and federal interests that the United States has in the Walker River Basin.

JURISDICTION

2. The ongoing jurisdiction of this Court over the waters of the Walker River Basin is exclusive. Jurisdiction over this amended counterclaim is further grounded on (i) the continuing jurisdiction of this Court, by virtue of the Decree entered herein, over the waters of the Walker River and its tributaries in California and Nevada; (ii) 28 U.S.C. § 1345 in that the proceedings

¹ Throughout this document, "Reservation" refers to those lands taken into trust by the United States on behalf of the Tribe and its members pursuant to law and as surveyed pursuant to 25 U.S.C. § 176.

1 are brought by the United States; (iii) 28 U.S.C. § 1367 which vests the court with supplemental
2 jurisdiction; (iv) 28 U.S.C. § 1651 which authorizes the court to issue all writs necessary or
3 appropriate in aid of its jurisdiction; (v) 28 U.S.C. § 1331, in that this first amended counterclaim
4 is brought by the United States of America, on its own behalf and for the benefit of the Walker
5 River Paiute Tribe, and the matter in controversy arises under the Constitution, laws or treaties of
6 the United States.

8 **PARTIES**

9
10 3. Counterclaimant, the United States of America, asserts the claims in this Amended
11 Counterclaim on its own behalf and for the benefit of the Walker River Paiute Tribe and its
12 members.

13 4. Counterdefendants are all actual or potential claimants to water of the Walker River
14 and its tributaries, including groundwater, as identified by the Court in *Case Management Order*
15 (April 18, 2000) ECF No. 108 at 6-7 (¶ 5) and served by the United States.

17 **GENERAL ALLEGATIONS**

18 5. The United States of America, under the Decree, currently has the right to use the
19 natural flow of the waters of the Walker River and its tributaries in the amount of 26.25 cubic
20 feet per second with a priority date of November 29, 1859, to irrigate 2,100 acres of land on the
21 Walker River Reservation that were under irrigation at the time of the initiation of this action.

22 6. The suit commenced by the United States in 1924, under Docket Number C-125,
23 was brought to quiet title and only concerned the surface water rights for use on the Walker
24 River Indian Reservation as those boundaries existed at the time the suit was commenced. The
25 suit did not adjudicate the groundwater rights of any of the parties in the litigation.
26
27
28

1 7. Paragraph XII of the 1936 Decree, entered on April 14, 1936, was amended on
2 April 24, 1940, to reflect that the Decree determined water rights "as of the 14th day of April,
3 1936." Paragraph XIV of the Decree provides that this Court retains jurisdiction for a number of
4 purposes, including modification of the Decree.
5

6 8. Subsequent to April 14, 1936, numerous persons and other entities, including the
7 United States, have appropriated additional waters from the Walker River Basin and its
8 tributaries. In many instances such claims to the use of water have not been subject to any
9 adjudicative process.
10

11 **FIRST CLAIM FOR RELIEF**

12 **WEBER RESERVOIR**

13 9. Paragraphs 1-8 are incorporated herein as if fully set forth in this paragraph 9.
14

15 10. Weber Reservoir is a federally-constructed reservoir located on the Walker River
16 Indian Reservation with a storage capacity of approximately 13,000 acre-feet. Construction of
17 the reservoir was initiated in 1933. The reservoir was practically completed by 1935, and the
18 floodgates making the reservoir fully operational were added in 1937. The United States, for the
19 benefit of the Walker River Paiute Tribe, is entitled to store unappropriated water from the
20 Walker River and its tributaries in Weber Reservoir for all purposes recognized under federal
21 law including but not limited to irrigation, stock watering, fish and wildlife, and domestic use.
22

23 11. By the use of Weber Reservoir to store water, the Walker River Paiute Tribe can
24 irrigate more than the 2,100 acres which it presently is entitled to irrigate under the terms of the
25 Decree.
26
27
28

12. The right to store water in Weber Reservoir has a priority date of April 15, 1936. The amount claimed is up to the capacity of the reservoir, approximately 13,000 acre-feet, at any given time inclusive of evaporation and seepage.

SECOND CLAIM FOR RELIEF

LANDS RESTORED AND ADDED TO WALKER RIVER RESERVATION

13. Paragraphs 1-12 are incorporated herein as if fully set forth in this paragraph 13.

14. The Walker River Indian Reservation was established in 1859 with a land base of approximately 320,000 acres. *United States v. Walker River Irr. Dist.*, 104 F.2d 334, 335 (9th Cir. 1939).

a. Under the Act of May 27, 1902, 32 Stat. 260-261, the Reservation land base was substantially reduced.

b. Under Executive Order No. 2820, March 15, 1918, the Reservation was increased by approximately 34,000 acres.

c. Under Executive Order Nos. 4041 and 4177 and the Act of January 6, 1928, 45 Stat. 160, the Reservation was increased again by approximately 70,000 acres.

d. Under the Act of June 22, 1936, 49 Stat. 1806-07, Congress authorized the Secretary of the Interior to set aside additional lands as part of the Reservation.

Pursuant to this authority, on September 25, 1936 the Secretary increased to the Reservation by approximately 167,460 acres. And again under the 1936 Act, in 1972 the Secretary increased the Reservation by approximately 2,900 acres.

15. The United States, for the benefit of the Walker River Paiute Tribe, is entitled to use water from the Walker River, its tributaries, and all other water located in, on, under, adjacent or otherwise appurtenant to the restored and added lands of the Reservation for all

1 purposes recognized under federal law. The restored and added lands of the Reservation are
2 entitled to a federal reserved water right as of the date land was restored or added to the
3 Reservation.
4

5 16. The United States, for the benefit of the Walker River Paiute Tribe, is entitled to
6 water rights for the restored and added lands in addition to the rights now recognized for use on
7 the lands of the Reservation under the Decree.

8 **THIRD CLAIM FOR RELIEF**

9 **GROUNDWATER FOR ALL LANDS WITHIN WALKER RIVER RESERVATION**

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11 17. Paragraphs 1-16 are incorporated herein as if fully set forth in this paragraph 17.

12 18. The United States, for the benefit of the Walker River Paiute Tribe, is entitled to
13 use the groundwater of the Walker River basin located in, under, adjacent or otherwise
14 appurtenant to all lands of the Reservation.
15

16 19. The amount claimed is the amount necessary to fulfill the purposes of the
17 Reservation.
18

19 20. The priority date claimed is either November 29, 1859, for those lands that have
20 remained within the original Reservation since 1859, and which have continuously been
21 held in trust for the Tribe, or the date land was restored or added to the Reservation.

22 **WHEREFORE**, the United States of America, through this amended counterclaim
23 on its own behalf and for the use and benefit of the Walker River Paiute Tribe, prays that this
24 Court enter judgment and decree as follows:

- 25 A. Quieting the title of the United States to the use in proper priority of the above-
26 claimed waters rights on its own behalf and for the use and benefit of the Walker
27 River Paiute Tribe;
28

B. Declaring that the United States, on its own behalf and for the use and benefit of the Walker River Paiute Tribe, is entitled to the exclusive use, occupancy and right to the quiet enjoyment of such water rights in their proper priority;

C. Declaring that the defendants and counterdefendants have no right, title or other interest in or to the use of such water rights;

D. Permanently enjoining any defendants and counterdefendants from asserting any adverse rights, title or other interest in or to such water rights; and

E. Grant such other and further relief as the Court deems proper.

Respectfully submitted this 3rd day of May, 2019.

/s/ Andrew "Guss" Guarino
ANDREW "GUSS" GUARINO
TYLER J. EASTMAN
U.S. Department of Justice
Indian Resources Section
Environment & Natural Resources Div.

ATTORNEYS FOR THE UNITED STATES

Certificate of Service

It is hereby certified that on May 3, 2019 service of the foregoing was made through the Court's electronic filing and notice system (*see* ECF No. 2100 and 2439) to all of the registered participants.

By /s/ Andrew "Guss" Guarino
Andrew "Guss" Guarino